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THE LEGAL AND ETHICAL IMPLICATIONS OF FASHION KNOCKOFFS: BALANCING INTELLECTUAL PROPERTY PROTECTION AND INDUSTRY INNOVATION

~ *Pranjala Raj & Apeksha Rawat*

Abstract

The fashion industry thrives on creativity, constant reinvention, and cultural expression. At the same time, it has always struggled with the problem of imitation. In recent years, the rise of fast fashion, digital platforms, artificial intelligence, and global e-commerce has dramatically intensified the circulation of fashion knockoffs. Designs unveiled on international runways are now replicated and sold across markets within days, often leaving original creators with little practical recourse.

This paper examines the legal and ethical implications of fashion knockoffs in the contemporary global fashion economy. It traces the historical presence of imitation in fashion, analyses how globalization and technology have accelerated the copy cycle, and undertakes a comparative study of the legal frameworks governing knockoffs in India, the United States, and the European Union. The paper argues that while imitation has historically played a role in diffusing fashion trends and making styles more accessible, the present scale and speed of knockoff production undermine creative labour, weaken incentives for innovation, distort fair competition, and generate broader social and environmental harms.

The paper concludes by proposing policy-oriented and regulatory responses aimed at striking a workable balance between protecting original creators and preserving space for creativity and circulation within the fashion industry.

Keywords: Fashion Knockoffs, Intellectual Property Law, Ethics, Innovation, Fashion Industry.

Introduction

"Imitation is the sincerest form of flattery that mediocrity can pay to greatness."

~ *Oscar Wilde*

Fashion occupies a distinctive position within the global creative economy. It is at once a form of cultural expression, an artistic practice, and a highly commercial industry. With the global fashion market projected to exceed USD 1.8 trillion in value in 2025, and India's apparel sector alone approaching USD 110 billion, fashion today represents not merely personal style but a significant site of economic activity. Yet the very characteristics that drive the industry's growth—rapid trend cycles, visual appeal, and global circulation—also make it particularly vulnerable to imitation.

Copying in fashion is not new. Designers have always drawn inspiration from existing styles, reinterpreted historical motifs, and responded to prevailing trends. What has changed in recent decades is the speed and scale at which imitation now occurs. Digital technologies such as computer-aided design (CAD), artificial intelligence, high-speed manufacturing, and global e-commerce platforms have compressed the time between design debut and market replication. A collection showcased at a fashion week in Paris or Milan can be photographed, digitally analysed, and reproduced in overseas factories within days. In contrast, the legal frameworks governing intellectual property protection remain rooted in slower regulatory processes and territorially confined enforcement mechanisms.

In India, fashion designs are governed through a fragmented set of intellectual property statutes, including the Designs Act, 2000; the Copyright Act, 1957; the Trade Marks Act, 1999; and the Geographical Indications of Goods (Registration and Protection) Act, 1999. Judicial efforts to clarify overlaps between design and copyright protection, particularly in cases such as *Microfibres Inc. v. Girdhar & Co.*, have provided some guidance. However, significant doctrinal ambiguity persists. These gaps are most acutely felt by independent designers and artisans, who often lack the resources and institutional support required to pursue prolonged litigation against large-scale imitators.

A comparative perspective highlights further asymmetries. The European Union has developed relatively flexible mechanisms, such as unregistered community design protection, that better accommodate the fast-moving nature of fashion cycles. The United States, by contrast, continues to restrict copyright protection for fashion designs through the "useful article" doctrine, as reaffirmed in *Star Athletica v. Varsity Brands*. These regulatory divergences create uneven levels

of protection across markets and are frequently exploited by knockoff producers operating through transnational supply chains.

Against this backdrop, this paper examines the legal and ethical dimensions of fashion knockoffs. It asks whether existing intellectual property regimes are capable of responding to contemporary forms of copying, and whether stronger legal protection necessarily serves the broader goals of creativity and innovation within fashion. The analysis proceeds on the premise that while imitation has historically contributed to the diffusion and democratization of fashion, the present dynamics of knockoff production raise deeper concerns for creative labour, consumer trust, cultural value, and environmental sustainability.

Understanding Fashion Knockoffs

“Knock-off” is a colloquial term used to describe goods that have a confusingly similar appearance to branded goods but do not contain any identical trademarks or logos.¹ It can be defined as products that replicate the design, style, or overall appearance of another product almost exactly to remind one of the elegance and aesthetic of the original product. Knockoffs are often confused with counterfeits and are used alternatively and wrongly so. Counterfeiting happens when the infringer intentionally makes its product identical or almost identical to an already protected trademark or uses the mark on goods which are not genuine with an intent to deceive the consumers.

One of the major drawbacks of these knockoffs is the lack of innovation, if the original creators are deprived of their economic benefit, their credit, their time, why would one want to invest the same. Without the possibility of any financial returns and lack of recognition, the original designers and the brands are discouraged from investing their resources for developing new designs hampering the growth of the fashion industry. This paper primarily deals with the critical analysis of the legal framework, ethical dilemmas dealing with the issue of the Fashion Knockoffs, and gives recommendations proposing ways to balance protection and innovation.

History of Knockoffs

The trajectory of fashion knockoffs can be traced from the Roman Era till today's modern era copyright disputes. Lower class in Roman times mirrors the styles of the High Class people by making cheap knockoffs versions of fabrics, alternative dyes, and jewelry. They used fabrics

¹ <https://grant.legal/brand-protection-counterfeit-knockoffs-parallel-imports/>

dyed with local substitutes to mimic the colors of senator's togas or patrician stola. Jewelry was replicated using bronze or glass instead of gold and gemstones. To curb these knockoffs on the streets, sumptuary laws, like the Lex Appia (215 BCE) were imposed.

The Lex Appia of 215 BCE restricted women to owning no more than half an ounce of gold, prohibited brightly colored stoles, and limited carriage use to special occasions. Only certain officials and the emperor could wear garments featuring purple stripes or pure Tyrian purple, while silk, gold rings, and ornate footwear were privileges reserved for the elite. Soldiers, peasants, and the urban poor were confined to simple, muted garments made of inexpensive materials.²

Centuries later, a major rise in knockoffs could be seen in Europe. By the late 1700s, printed textiles became the trend of the day. British legislators passed the Designing and Printing of Linen Act³ (1787) and later the Copyright of Designs Act⁴ (1839) to protect pattern creators. Calico printers complained of piracy and fraud, but imitation remained unstoppable proof that fashion copying was inseparable from its own popularity. Britain tried to reward originality in textile printing.

The Industrial Revolution pushed the scale of knockoffs. Mass production of different fashion products was made possible through machines. Designers started raising issues regarding the originality of the products in the market. Thus, designers started using labels as a way to define authenticity. During the 1860s, Couturier Charles Frederick Worth was the first designer to start signing his name to his clothing.⁵ Similarly, Louis Vuitton's Monogram (1896) was created to resolve the issue of knockoffs.⁶ But somehow they became the world's most copied designs. This shift encouraged the proliferation of knockoffs. Years later, Paul Poiret discovered unauthorized reproductions of his work, even complete with fake labels.

² <https://www.britannica.com/topic/Lex-Appia>

³ https://www.wilsongunn.com/history/history_designs.html

⁴ https://www.wilsongunn.com/history/history_designs.html

⁵ <https://www.napoleon.org/en/history-of-the-two-empires/articles/charles-frederick-worth-the-empress-eugenie-and-the-invention-of-haute-couture/>

⁶ <https://in.louisvuitton.com/eng-in/magazine/articles/brand-protection>

By the early 20th century, the American consumer market frequently copied Parisian fashion and sold its knockoff versions. One of those New Yorkers is Ellen Curtis “Madame” Demorest. She along with her husband build an empire by commercializing knockoffs through sewing patterns, allowing middle-class consumers to recreate high speed society fashion.⁷

The Court in the case of *United States v. Fashion Originators’ Guild of America*⁸ (1941, US Supreme Court 312 U.S. 457) had a different opinion regarding knockoffs. They held that the Guild’s “private enforcement” actions against knockoff manufacturers violated antitrust law, setting a precedent that market regulation, even to curb copying, could not infringe public competition policy.

These past incidents remind us of the dynamic relationship between luxury brands, mass production, knockoffs and legal systems during the 19th and 20th centuries, shaping both the creative landscape and the regulatory framework of global fashion. This persistence showed how fashion could challenge social barriers even in a stratified empire. When one could not move upward socially, one could at least look the part.

Role of Globalization and Digital Media accelerating copy cycles in terms of fashion knockoffs

Nearly 97 percent of consumers discover different fashion brands and products through platforms like Instagram. Instagram reels are major source of fashion inspiration.⁹ Digital Media offers unprecedented visibility and global reach. But there is a downside for such advantage. Through live streaming of Fashion runways, social media and Fashion websites, knockoffs can easily be copied and distributed in the market. Globalization has accelerated the copy cycle. Brands like Shein are often seen bolstering copy cycle. H&M¹⁰ and Bailey Prado¹¹ accused Shein of copying

⁷ <https://www.mcny.org/story/madame-demorest-woman-top-19-century-fashion-empire>

⁸ *United States v. Fashion Originators’ Guild of America* (1941, US Supreme Court 312 U.S. 457)

⁹ <https://tkc.in/the-impact-of-social-media-on-fashion-consumption-and-culture-an-indian-perspective/?hl=en-GB#:~:text=According%20to%20a%20Meta-commissioned,significant%20source%20of%20fashion%20inspiration.>

¹⁰ <https://www.euronews.com/culture/2023/07/15/high-technology-not-high-design-fast-fashion-brand-shein-embroiled-in-new-lawsuit>

¹¹ <https://www.dazeddigital.com/fashion/article/53779/1/independent-designer-bailey-prado-talks-whole-life-copied-shein-fast-fashion>

their designs through social media. Even designer like Masaba,¹² Sabyasachi and Rahul Mishra¹³ have expressed their frustration regarding Instagram playing key role in copyright cycle. Knockoff producers closely monitor these platforms. They can easily copy silhouettes, colour patterns and embellishment. Variations in the price range add fuel to the flames.

According to eMarketer data, approximately one-third of makeup consumers ages 18 to 34 (33%) and 25 to 34 (35%) bought fake makeup products.¹⁴ Social media is the reason behind it. Nowadays, influencers promote and normalise normalize the consumption of cheap look alike products. Consumers prefer affordable products over original products, indirectly sustaining the knockoff economy. This challenges brand value and designer's reputation. 71% of Gen Z population and 67% of Millennials population sometimes or always prefer to buy fake products.¹⁵ Today, Gen Z's generation focus on affordability and rather than quality.

There is also a rise in cross-border knockoff production and distribution networks due to digital globalization. Manufacturers, suppliers, and retailers can easily coordinate in different countries via online communication. To further escape the punishment, manufacturers produce goods in one jurisdiction and market it on different global e-commerce platforms. This helps them to bypass strict regulatory oversight. Cross-border jurisdictional issues in intellectual property enforcement further encourage such practices. In India, knockoffs of Hermès sandals for Rs. 599 or Tory Burch bags were widely available on major e-commerce sites. Influencers on social media are mostly responsible for the sale growth of knockoff products.¹⁶

Thus visibility and global reach has become paradox for fashion industry. Digital Media is not only normalizing copy cycle but also discourages innovation and challenge intellectual property.

International Framework

United States of America

¹² <https://timesofindia.indiatimes.com/city/mumbai/fashion-designers-raise-concern-over-plagiarism/articleshow/51695940.cms>

¹³ <https://timesofindia.indiatimes.com/life-style/fashion/buzz/whenever-a-designer-goes-to-court-over-plagiarism-this-order-will-be-referred-to-delhi-hc-restrains-businesses-from-copying-rahul-mishras-tigress-design/articleshow/123424428.cms>

¹⁴ <https://intelligence.coffee/2025/01/copycat-brands-are-proliferating/?hl=en-IN#:~:text=According%20to%20eMarketer%2C%20around%20one,sometimes%20or%20always%20buy%20dupes>

¹⁵ <https://intelligence.coffee/2025/01/copycat-brands-are-proliferating/?hl=en-IN#:~:text=According%20to%20eMarketer%2C%20around%20one,sometimes%20or%20always%20buy%20dupes>

¹⁶ <https://www.livemint.com/industry/retail/india-is-awash-with-luxury-and-lifestyle-fakes-now-brands-are-fighting-back-11751516023214.html>

The United States does not provide comprehensive, fashion-specific protection for clothing designs under its intellectual property regime. Instead, designers are required to rely on a combination of trademark, trade dress, copyright, and design patent law, each of which offers only partial and often impractical protection for fashion products.

- **Trademark** - Trademark and trade dress protection under the Lanham Act primarily safeguard brand identifiers such as logos, names, and distinctive visual features that signal source. While these mechanisms can prevent consumer confusion regarding brand origin, they do little to protect the underlying design of garments themselves. Section 32¹⁷ and Section 43(a)¹⁸ of the Lanham Act prohibit the use of trademarks or trade dress that would likely cause confusion, deception, or mistake in reference to the origin of fashion goods. These provisions apply to both registered and unregistered trademarks. On the other hand, Section 43(c)¹⁹ provides protection against trademark dilution for famous fashion marks. Proof of consumer confusion is not required under this section.

In the case of *Hermès International v. Lederer de Paris Fifth Avenue, Inc.*, 219 F.3d 104 (2d Cir. 2000),²⁰ Hermès's legal team sought out knockoff versions of the brand's scarves, handbags, and other accessories. If a knockoff's version deceives the consumer into thinking it is a genuine Hermès product, then a court will be convinced that the knockoff violates Hermès trade dress or trademark rights.

But due to seasonal or fast-moving designs, it is difficult for Fashion brands to prove distinctiveness, secondary meaning, or a likelihood of confusion.

- **Copyright** - Copyright protection for fashion designs in the United States is significantly constrained by the "useful article" doctrine.²¹ Under this doctrine, clothing is treated as a functional object rather than a purely artistic work, which excludes most garments from copyright protection. The Supreme Court's decision in *Star Athletica v. Varsity Brands*

¹⁷ Section 32, Lanham Act — 15 U.S.C. § 1114 (1946).

¹⁸ Section 43(a), Lanham Act — 15 U.S.C. § 1125(a) (1946).

¹⁹ 15 U.S.C. § 1125(c) (2006).

²⁰ *Hermès International v. Lederer de Paris Fifth Avenue, Inc.*, 219 F.3d 104 (2d Cir. 2000)

²¹ 17 U.S.C. § 101.

(2017)²² reaffirmed this position by holding that while separable artistic features of useful articles may be protected, the garment as a whole remains outside the scope of copyright. A similar decision was passed in *Jovani Fashions v. Fiesta Fashions* (2012)²³, regarding prom dresses. In practice, this distinction offers limited relief to fashion designers, as most design elements are inseparable from the functional aspects of clothing.

Section 102(a)(5) of the Copyright Act²⁴ extends its protection to drawings of dress designs. They can be copyrighted as a work of art, which protects "pictorial, graphic, and sculptural works" but does not extend to the useful article itself. Thus, designers or brands may claim copyright protection for drawings but they do not have legal means to protect those drawing designs from being manufactured by others.

- **Design Patent Law** - Design Patent law provides another potential avenue of protection in the United States, allowing designers to protect novel and non-obvious ornamental features of products. However, the process of obtaining design patents is time-consuming and costly, making it ill-suited to the fast-paced fashion cycle where trends change within seasons. As a result, design patents are more commonly used for iconic, long-lasting designs rather than for everyday fashion collections.

Legislative attempts to introduce sui generis protection for fashion designs, such as the proposed Design Piracy Prohibition Act²⁵ and the Innovative Design Protection and Piracy Prevention Act,²⁶ have failed to gain traction, leaving U.S. designers with limited legal tools to combat knockoffs.

- **Geographical Indications** - There is no separate act for the protection of Geographical Indications against Fashion Knockoffs in U.S.. Fashion brands can seek protection indirectly from trademark (The Lanham Act) and the Unfair Competition law. Section 32

22 *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 580 U.S. 405 (2017).

23 *Jovani Fashion, Ltd. v. Fiesta Fashions*, 500 F. App'x 42 (2d Cir. 2012)

24 17 U.S.C. § 102(a)(5).

25 H.R. 2033, 110th Cong. (2007).

26 H.R. 2196, 111th Cong. (2009).

²⁷and Section 43(a) ²⁸of the Lanham Act prohibits the use of trademarks or trade dress that would likely cause confusion, deception, or mistake in reference to the origin of fashion goods. Any false or misleading use of geographic origin causing consumer deception will be against the law. The Supreme Court in the case of *Inwood Laboratories v. Ives Laboratories* (1982) ²⁹held that trademark law (The Lanham Act) aims to prevent consumer deception regarding the source or origin of goods. This rationale can be applied equally to misleading geographic claims in the case of fashion products.

European Union

The European Union provides cumulative protection regime that enables designers to rely on multiple layers of intellectual property rights, thereby strengthening their ability to challenge knockoff producers.

- **Trademark** - The European Union, through EU Trademark Law, provides strong protection against trademark violations in fashion knockoffs. EU provides protection under Regulation (EU) 2017/1001 ³⁰on the EU Trade Mark (EUTMR) ³¹and the Trademark Directive (EU) 2015/2436 ³²for likelihood of confusion, reputation-based protection, and unfair advantage, making it particularly effective for fashion brands. Under Article 9 of the EU Trade Mark Regulation (EUTMR),³³ the owner of an EU Trade Mark (EUTM) has exclusive rights to prevent third parties from using identical or similar signs in the course of trade where such use affects the functions of the trademark. Further under Article 9(2)(c) of EUTMR,³⁴ the owner of the trademark can restrict others

²⁷ Section 32, Lanham Act — 15 U.S.C. § 1114 (1946).

²⁸ Section 43(a), Lanham Act — 15 U.S.C. § 1125(a) (1946).

²⁹ *Inwood Labs., Inc. v. Ives Labs., Inc.*, 456 U.S. 844 (1982).

³⁰ Council Regulation 2017/1001, 2017 O.J. (L 154) 1 (EU).

³¹ Regulation 2017/1001, 2017 O.J. (L 154) 1 (EU).

³² Council Directive 2015/2436, 2015 O.J. (L 336) 1 (EU).

³³ Council Regulation 2017/1001, art. 9, 2017 O.J. (L 154) 1, 10 (EU).

³⁴ Council Regulation 2017/1001, art. 9(2)(c), 2017 O.J. (L 154) 1, 10 (EU).

from taking unfair advantage of, or is detrimental to, the distinctive character or reputation of a famous mark.

- **Copyright** - The EU also adopts a broader approach to copyright protection for artistic works, allowing fashion designs to qualify for copyright protection if they meet the threshold of originality. Originality in this case requires the expression of the author's own creative choices. This will include designs other than registered ones (subject to Article 17 of the Design Directive)³⁵. Member States cannot impose additional criteria for any works to qualify for copyright protection. While determining originality, the court in the case of *Infopaq International A/S v Danske Dagblades Forening (C-5/08)*³⁶ refused to accept novelty as one of the merits of originality. Thus, the EU does not have a high threshold for copyright protection against knockoffs.
- **Design Law** - In contrast to the United States, the European Union has developed a more flexible and fashion-sensitive legal framework. The EU's system of Registered Community Designs (RCDs) and Unregistered Community Designs (UCDs) provides a tiered approach to protection that better aligns with the realities of fashion production. UCD protection arises automatically upon the public disclosure of a design within the EU and lasts for a short period, making it particularly suited to the fast-moving nature of seasonal fashion. Although UCDs only protect against deliberate copying, they offer designers a valuable, low-cost mechanism to deter knockoffs during the critical initial period following a design's release.
Registered Community Designs, on the other hand, provide longer-term protection for designs that are commercially significant and expected to endure beyond short fashion cycles. Registered Community Design provides exclusive protection upto 25 years. It can be renewed every 5 years.
- **Geographical Indications** - More recently, the EU has expanded geographical indication protection to include craft and industrial products, reflecting a growing recognition of the

³⁵ Council Directive 98/71, art. 17, 1998 O.J. (L 289) 28, 35 (EC).

³⁶ *Infopaq International A/S v Danske Dagblades Forening (C-5/08)*

cultural and regional dimensions of design.³⁷ Through Regulation (EU) 2023/2411,³⁸ fashion products (textiles, lace, and jewelry) can claim the same high level of GI protection. But products must qualify GI standards and be registered for any claims. This development is particularly significant for traditional textiles and region-specific fashion products, which are often vulnerable to imitation and cultural misappropriation. Overall, the EU's regulatory framework reflects a more holistic understanding of fashion as both a creative and commercial enterprise, offering comparatively stronger safeguards against knockoffs.

Legal Frameworks in India

Knockoffs are illegal copies of original designs however these designs are not exact copies of the same and are merely similar looking. Consequently there are no legal consequences because of which infringers business flourish by selling these copies at cheaper prices. Big fashion Houses incur losses as the brand value of the original brand decreases plus the implicit monetary loss because of these loopholes in laws dealing with the knockoffs. In India, following statutes deals with the concerned subject of the paper:

1. The Design Act, 2000

Design only refers to the physical attributes such as shape, pattern, colour composition, line composition, etc., on any two-dimensional or three-dimensional made in any mechanical, manual or chemical manner.³⁹ The problem here is that it does not mention any methods or principles associated in putting together something basically the functional part. It also does not include trademarks, property marks and artistic works. Another and one of the major issues under the Act is that it only protects registered designs and not the unregistered ones contrary to the Copyrights Act. The process for registration of designs is very time-consuming because of which many designers avoid it. Hence these unregistered designs remain unprotected.

The two requirements according to Sec 2(d) of the Act⁴⁰ are:

- There needs to be a design as in specific pattern, shape or pattern.

³⁷ <https://www.ipinitialia.com/unione-europea/eu-regulation-expands-geographical-indications-protection-to-craft-and-industrial-products/?hl=en-IN#:~:text=Until%20now%2C%20geographical%20indication%20protection,Prosciutto%20di%20Parma%20or%20Champagne.>

³⁸ Council Regulation 2023/2411, 2023 O.J. (L 2411) 1 (EU).

³⁹ 2(d) of the *Designs Act, 2000* (Government of India)

⁴⁰ Id.

- That design needs to be put on to a product considered as an *article* under the law.

Consequently for design protection, a particular design must exist independently and be applied on a specific product. The ideas or the exclusive products which are directly created without a distinct design do not attract design protection.

However, the Delhi High Court in the case of *Microfibres Inc. v. Girdhar & Co*⁴¹ differs and stated that even direct production of the designed item would be protected under the Designs Act, 2000 given it is registered and has visual appeal. Herein quoted:

*“It needs to be emphasized that it is not necessary that in every case a design has to be preceded by an artistic work upon which it is founded. A craftsman may create a design without first creating a basic artistic work. This may best be illustrated by a weaver who may straightaway create a design while weaving a shawl, which product could be created even without the basic artistic work.”*⁴²

Although the basic understanding of the aforesaid judgement is correct, but if we go by the definition provided in Sec 2(d) of the Designs Act, 2000 the given statement cannot be true as the statute clearly states, shapes and patterns applied on an article.

2. The Copyright Act

A bundle of rights are granted to people such as the right of reproduction, adaptation, publication, translations and communication to the public and various other rights.⁴³ The Copyrights Act, 1957 grants protection to designs in fashion which persist up to 50th reproduction through an industrial process of the item to which that design has been applied. The Copyright Act conflicts with the Design Act on the area of design protection. Sec 15 of The Copyright Act states that the copyright shall not be granted to designs which are registered or capable of being registered under The Designs Act. Sec 15⁴⁴ states:

- Copyright shall not subsist under this Act in any design which is registered under the Designs Act, 2000.⁴⁵
- Copyright in any design, which is capable of being registered under the Designs Act but which has not been so registered, shall cease as soon as any article to which the design has been applied has been reproduced more than fifty times by

⁴¹ *Microfibres Inc. v. Girdhar & Co* 2009 SCC OnLine Del 1647

⁴² Id

⁴³ Sec 14, Copyright Act, 1957.

⁴⁴ Sec 15, Copyright Act, 1957.

⁴⁵ Id

an industrial process by the owner of the copyright or, with his license, by any other person.⁴⁶

The fashion design which comes under the category of ‘original artistic work’ and therefore is not able to be registered as ‘design’ under the Designs Act will be granted copyright protection under the Copyright Act. The Copyright in original artistic work is automatically present as soon as it comes into existence and it persists during the life period of the creator plus sixty years when published during the lifetime of the creator.⁴⁷ Sec 2(c) of the copyright Act defines ‘artistic work’ as a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality, a 'work of architecture; and any other work of artistic craftsmanship⁴⁸. As held in the case of *Rajesh Masrani v. Tahiliani Design Pvt. Ltd.*⁴⁹ and hereby regenerated:

“ Under Section 15(2) of the Copyright Act, in case the copyright in any design which is capable of being registered under the Designs Act, 1911 but which has not been so registered, shall cease to exist as soon as any article to which the design has been applied has been reproduced more than 50 times by an industrial process. The definition of ‘Design’ in the Designs Act, 1911 is different from the definition of ‘Design’ in the Designs Act, 2000. Section 2(d) of the Designs Act, 2000 does not include any ‘artistic work’ as defined in clause (c) of Section 2 of the Copyright Act. It is clear from the meaning of the design under the Designs Act, 2000 that the artistic work as defined in Section 2(c) of the Copyright Act, 1957 is excluded if any party is able to bring his case within the framework of Section 2(c) of the Copyright Act, 1957 while claiming a copyright, then the suit for infringement of copyright is maintainable.”

As aforementioned if a designer or big fashion houses have created a design which inescapable of being registered under the Copyright Act but has not been registered will not be protected as soon as the design has been applied and has been reproduced more than 50 times through industrial process according to sec 15 of the act. Hence, the period of protection is very short lived. This has also been reinstated in the landmark case of *Microfibres v Girdhar*⁵⁰.

⁴⁶ Id

⁴⁷ Sec 22(1), Copyright Act, 1957.

⁴⁸ Sec 2(c), Copyright Act, 1957.

⁴⁹ *Rajesh Masrani v. Tahiliani Design Pvt. Ltd* 2008 SCC OnLine Del 1283

⁵⁰ *Microfibres Inc. v. Girdhar & Co* 2009 SCC OnLine Del 1647

3. The Trademark Act, 1999

Trademarks come into play when creators enable their rights through brand names, logos, emblems, or very distinctive visual elements that make their creation different and appealing to consumers. Trademarks specifically matter in the fashion industry as through trademarks the status of brands is heightened, consumers mostly recognise brands through logos shapes or its aesthetic which are registered under trademark. It maintains the brand value of the big fashion houses and designers. For example, Sabyasachi Mukherjee, a renowned Indian Fashion Designer has registered various aspects of his Fashion empire like 'Calcutta Tiger' in order to safeguard brand identity. Big fashion houses like Louis Vuitton have trademarked their LV monogram logo. In India the statute which deals with this issue of knockoff is The Trademark Act, 1999. Though knockoffs are not directly dealt with but are taken care of under infringement, passing off and dilution.

Sec 2(zb)⁵¹ defines a trademark as a mark capable of being graphically represented and distinguishing goods and services. Sec 29⁵² deals with infringement herein a knockoff causes infringement under Trademarks Act if it uses a mark which is deceptively similar to the registered trademark and the amount of similarity can cause confusion among the consumers about the original brand. The Hon'ble Supreme Court in the case of *Caila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd.*⁵³ held that even overall similarity that causes ambiguity amounts to infringement. This principle can be strongly applied in the fashion realm wherein consumers specifically rely on aesthetic expression of the items. In the cases where even if the exact trademark is not copied but imitating the look and aesthetic of the product may amount to passing off. In the case of *Christian Louboutin SAS v. Pawan Kumar*⁵⁴ the hon'ble Delhi High Court held that overall dress in the case, red sole can be protected. Likewise, in another case of *Reckitt & Colman v Borden*⁵⁵ the court highlighted that imitating shape, get-up, or packaging that deceives or creates a false impression is justiciable. Imitation of Louis Vuitton patterns and

⁵¹ Sec 2(zb), The Trademark Act, 1999.

⁵² Sec 29, The Trademark Act, 1999.

⁵³ *Caila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd* (2001) 5 SCC 73.

⁵⁴ *Christian Louboutin SAS v. Pawan Kumar* 2017 SCC OnLine Del 12173.

⁵⁵ *Reckitt & Colman Products Ltd. v. Borden Inc. & Others*, [1990] UKHL 12; [1990] 1 All ER 873; [1990] 1 WLR 491

monograms even in the cases where the exact logo is not used also amounts to infringement and passing off⁵⁶.

The doctrine of dilution protects famous brands which have registered their trademark and have a reputation in India u/s Sec 29(4)⁵⁷. Herein, sec 29(4)(c)⁵⁸ specifically says that anyone who takes unfair advantage of or is detrimental to the distinctive character or repute of the registered trademark causes infringement. In the case of *Daimler Benz AG v Hybo Hindustan*⁵⁹ the Delhi High Court held that the marks which are already famous wield strong distinctiveness and any unauthorized use is not allowed as it destroys its uniqueness.

The Indian law on trademarks is though integral of brand protection but is full of major loopholes in the Fashion realm. The Trademark Act, 1999 only protects the name, logos, and other brand identifiers and not the fashion designs, motifs or surface ornamentation. For instance in the case of *Christian Louboutin S.A.S v. Abubaker*⁶⁰, the single judge bench refused the multi-million dollar multinational organization their right over their red sole arguing single colors are not trademarked under the Indian Regime. Color is potentially one the most potent tools in packaging. Several studies have confirmed that color induces the fastest response of any aspect of a package.⁶¹ The Indian judiciary has not been inclusive when it came to ruling on non- traditional trademarks⁶² which demotivates the big international brands to invest in the Indian Market. Another drawback of the Indian Trademark Law is the lengthy process of registration, the process of registering the trademark takes months whereas the knockoffs are generated within days. This time taking process of registration often discourages the small designers as a result their designs continue to be imitated by the knockoff business.

4. Geographical Indication

A Geographical Indication (GI) is a type of Intellectual property wherein goods from a specific region is protected. The qualities, reputation and other factors in relation with the

⁵⁶ *Louis Vuitton Malletier v. Atul Jaggi* 2010 SCC OnLine Del 1956

⁵⁷ Sec 29(4), The Trademark Act, 1999

⁵⁸ Sec 29(4)(c), The Trademark Act, 1999

⁵⁹ *Daimler Benz AG v Hybo Hindustan* AIR 1994 DELHI 239.

⁶⁰ *Christian Louboutin S.A.S v. Abubaker* 2019 SCC OnLine Del 8028

⁶¹ [*D.P. Mittal, Trade Marks: Passing off & Geographical Indications of Goods, 1.15 (2002)*]

⁶² *Britannia Industries Ltd. v. ITC Ltd., (2017) 70 PTC 66 (Del)(India); Cipla Ltd. MK Pharmaceuticals, (2008) 36 PTC 166 (Del)(India).*

goods are derivable from their geographical origin. Sec 2(1)(e)⁶³ of the Geographical Indications of Goods (Registration and Protection) Act, 1999 defines GI as an indication which identifies such goods as originating or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin. For example the kolhapuri chappals have a GI tag as belonging to various districts of Maharashtra, the Banarasi Silk, the Pochampally Ikat Sarees of Telangana, Chanderi fabric and various others. Sec 22⁶⁴ of the GI Act defines infringement wherein Sec 22(b)(i)⁶⁵ specifically states "all acts of such a nature as to create confusion by any means whatsoever with the establishment, the goods or the industrial or commercial activities, of a competitor", knockoffs do exactly that it creates confusion among the consumers and creates consumer deception.

Knockoffs are defined as imitation of things herein they imitate the goods which have already received a GI tag undermining their economic value and causing ambiguity among the consumers. For instance courts have continuously taken actions and have granted injunctions in cases of infringement of the Banarasi Sarees⁶⁶ which have obtained the GI tag since 2009. Similarly the Kanchipuram Sarees⁶⁷ of Tamil Nadu obtained their GI tag in 2005 various lawsuits of injunctions were registered in order to curb this issue of knockoffs.

One of the major loophole in the GI regime is that GI Act protects the name and not the design of the product for instance anyone can imitate the GI tagged product unless they don't use the exact name of the product as was the case with kolhapuri chappals wherein Prada copied the exact style of the chappals but didn't use the name kolhapuri attached to it. Another drawback of the GI law is there is no mechanism in relation to extraterritorial enforcement in relation with the GI tagged good as a result foreign brands continue exploiting the Indian origin brands by not giving them any sort of credit let alone the economic benefits.

The main objective of giving a GI tag is to preserve the livelihood of the local artisans by conferring them exclusive rights to use the GI label, it shows the authenticity of the goods, knockoffs defeats this by creating unfair competition among the producers and taking away

⁶³ Sec 2(1)(e), Geographical Indications of Goods (Registration and Protection) Act, 1999.

⁶⁴ Sec 22, Geographical Indications of Goods (Registration and Protection) Act, 1999

⁶⁵ Sec 22(b)(i), Geographical Indications of Goods (Registration and Protection) Act, 1999

⁶⁶ (Recognition and Marketing Opportunities of a "GI" Tag in Handloom Product: A Study of Banaras Brocades and Sarees Servjaeta Verma¹† and Nandita Mishra²)

⁶⁷ (Study on the handloom sector in India in relevance to geographical indication Dr. Tejashree P Patankar)

the economic benefits from the local artisans. It undermines the cultural heritage and traditional value attached to the goods due to the GI tag. Also these poor quality knockoffs take away the brand reputation of the GI products depleting their distinctiveness and prolonged market sustainability.

Ethical issues regarding fashion knockoffs

Anita Dongre in an interview famously said:

*"Plagiarism and knock-offs are by-products of the fashion industry. ... A good designer would never feel the need to replicate designs as the audience is extremely aware in this digital world. There is no shortcut to innovation and success, and this has stayed constant through the years. While plagiarism is greatly diluting fashion, true connoisseurs of fashion will know how to differentiate."*⁶⁸

She believes that copying the designer products dilutes fashion's value. Due to knockoffs trends in fashion industry, brands valuation is affected. Fake goods are impersonating as Hermes bags, Nike shoes, Sabyasachi lehenga, Chanel perfume, or Prada products, being sold not only by street vendors like in Chandni Chowk but also on Instagram or Facebook. This raises various ethical issues regarding knockoffs impact on the society.

Impact on Designers and Brands.

Designers and Brands invest considerable amount of time, efforts and resources into creating an original product or design. In fact new emerging designers face losses in credibility and market visibility. Regardless, how big or small Fashion designers and Brands are, they constantly strive to be must be innovative. They must work hard to stay ahead of current in trends to remain in the competition.

When knockoffs flood the market, they directly undermine these investments and cause financial loss. Sales of original products can decline as consumers choose cheaper alternatives, resulting in substantial revenue losses for designer and brands. For example, Diane von Fürstenberg's wrap dress became a cultural sensation around 1970s. Over 5 million pieces were sold. But soon, her signature prints and silhouette were copied and sold in the market resulting devaluing her

⁶⁸ https://www.business-standard.com/article/news-ians/plagiarism-is-by-product-of-fashion-industry-anita-dongre-ians-interview-117060600321_1.html

original design. By the early 1980s, sales plummeted, and her company almost collapsed. She had to rebuild her business from scratch.⁶⁹ Thus, the endless hard work on creation of designs and products must be entitled of protection otherwise fashion industry will become less original homogenized.

In India through the case of M/s Reflect Sculpt Pvt. Ltd. & Anr. v. Abdus Salam Khan⁷⁰, Delhi High Court protected the original works of designer Gaurav Gupta. Court found primarily facie case of copying his signature sculpted-boning technique and selling garments. The Court ordered restraining order against the defendant from manufacturing or selling infringing products. In the final order, the Court awarded ₹5,00,000 in damages and destruction of infringing stocks.

Beyond financial loss, fashion knockoffs might take a toll on mental health. It diminishes artistic confidence, creative ownership and brand credibility. Designers like Rahul Mishra⁷¹, Masaba Gupta and Karl Lagerfeld have often expressed their frustration regarding cheaper versions of their designs available in the market. Gucci's Alessandro Michele expressed his sentiment

*"When I look at the people who try to copy me just to create confusion about what's real and what's fake, I think it's a shame because, in a way, it's like they're destroying my work. If you try to make the same thing without a soul, it will be trashy and ugly."*⁷²

Knockoff also damaged brand value and reputation. Knockoffs can dilute a brand's reputation and diminish its perceived value. Fashion houses rely heavily on their exclusive nature and brand name. But when knockoff products become widely available in the market, the aura of exclusivity and prestige are diminishes. People prefer cheaper versions. This leads to a long-term decline in fashion brand value and equity. Brands invest huge sum of money in digital authentication, blockchain tracking, and consumer education to ensure fair competition in the market and to protect their designs.

Quality and safety issues

Due to visual appearance and affordable prices, knockoffs products attract consumers like 'moth to flames'. But these products are often short-lived and are of poor quality. Unlike original luxury

⁶⁹<https://www.gsb.stanford.edu/insights/diane-von-furstenberg-find-your-door-push-through-it>

⁷⁰ M/S Reflect Sculpt Private Ltd. & Anr vs Abdus Salam Khan, High Court of Delhi, CS(COMM) 278/2024 & I.A. 4468/2025, on 19th September, 2025.

⁷¹ <https://timesofindia.indiatimes.com/life-style/fashion/buzz/whenever-a-designer-goes-to-court-over-plagiarism-this-order-will-be-referred-to-delhi-hc-restrains-businesses-from-copying-rahul-mishras-tigriss-design/articleshow/123424428.cms>

⁷² <https://www.interviewmagazine.com/culture/alessandro-michele-gucci-on-authenticity-in-the-age-of-artifice>

or designer products, knockoffs products failed to adhere with strict quality control protocols and regulatory standards. Knockoffs are usually mass produced. Their primary goal is cost minimization than appreciation for craftsmanship or consumer welfare. These products contain untested materials, resulting irritation on the skin, shrink or lose color after minimal use. When it comes to footwear and accessories, poor stitching or metal can cause allergic reactions or physical discomfort. Recently, the Directorate of Revenue Intelligence (DRI) seized 160 metric tonnes of smuggled goods. These included cosmetics and unbranded shoes. Unbranded or knockoff footwear lacked BIS certification. They failed durability, chemical resistance, and material safety tests. Moreover, fake cosmetics and beauty products often contain unapproved or contaminated ingredients.⁷³ These cheap quality products pose serious dermatological risks. Authorities have also raided places like in Mumbai, Surat and Delhi⁷⁴ etc. They have seizure many products like MAC, Huda Beauty, Sephora, Dior products etc.

Outside India, U.S.'s Consumer Product Safety Commission (CPSC) has repeatedly issued seizure of counterfeit children's jewelry and fashion accessories. This was due to high levels of toxic metals like lead and cadmium in violation of the Federal Hazardous Substances Act. EU REACH Regulation prohibits toxic chemicals found in knockoffs items.

Production of Knockoffs products are usually outside the legal framework. These factories lack ventilation, workers safety and good quality products to work with. These are Consumer related as well as workers safety problems.

Courts in USA, EU and India pay special attention to IP enforcement but quality and safety issues are not discussed in detail. Courts usually order seizure and destruction of fake products to curb distribution of products.

Environmental consequences

"Cheap fashion is really far from that, it may be cheap in terms of the financial cost, but very expensive when it comes to the environment and the cost of human life." – Sass Brown, author of ECO Fashion.⁷⁵

⁷³ <https://timesofindia.indiatimes.com/city/mumbai/dri-mumbai-seizes-160-tonnes-of-substandard-chinese-toys-counterfeit-cosmetics-worth-rs-6-5-crore/articleshow/122981075.cms>

⁷⁴ <https://timesofindia.indiatimes.com/city/delhi/faux-fashion-factory-man-held-for-running-fake-dior-fendi-unit-in-shalimar-bagh/articleshow/123751421.cms?>

⁷⁵ <https://earth.org/fast-fashion-quotes/>

To curb the circulation of fake products, courts usually order destruction of fake products. In USA (under Section 1118 of the Lanham Act⁷⁶), India (under Sections 135 and 139 of the Trade Marks Act, 1999)⁷⁷ and EU (Under EU Regulation 608/2013 and the IP Enforcement Directive (2004/48/EC))⁷⁸, courts have ordered seizure and destruction of goods in order to protect trademark integrity and consumers, For example, in the case of Christian Louboutin SAS v. Abu Bakr (Delhi High Court, 2019)⁷⁹, where the defendant was found guilty of mimicking “Red Sole” shoes of iconic Louboutin brand. To protect the reputation of the mark, the court ordered the seizure and destruction of all fake shoes recovered during raids. Similar decision was passed in the case of Louis Vuitton Malletier v. Atul Jaggi (2018),⁸⁰ Levi Strauss & Co. v. Rajesh Kumar Gupta⁸¹ and Hermès International v. Lederer de Paris Fifth Ave., Inc. (2001).⁸²

These confiscated leather products contain chromium-based tanning chemicals, PVC coatings and phthalates. While incinerating, materials produce carcinogenic emissions including carbon dioxide, nitrous oxide, dioxins and furans, affecting air, soil, vegetation, water, biota, etc.⁸³

Dioxins are highly toxic in nature. It can cause cancer, reproductive and developmental problems, damage to the immune system, and can interfere with hormones. On the other hand release of carbon monoxide and other greenhouse gases contribute in air pollution. Microplastic fibers are also released into the air when synthetic fibre clothes are burned.⁸⁴

Knockoffs products contain low quality material including polyester blends, acrylic or cheap cotton. These materials are discarded quickly taking hundreds of years to decompose. US alone is responsible for throwing away an estimated 11.3 million tons of textile waste. Around 85% of this textile waste ends up in landfills. While production of these materials vast amount of water,

⁷⁶ <https://www.law.cornell.edu/uscode/text/15/1118>

⁷⁷ Trade Marks Act 1999 (India) ss 135, 139.

⁷⁸ <https://eur-lex.europa.eu/EN/legal-content/summary/intellectual-property-rights-customs-enforcement.html>

⁷⁹ Christian Louboutin SAS v Abubaker & Ors (High Court of Delhi, RFA (OS)(COMM) 13/2018 & CM 29064/2018, 11 April 2019).

⁸⁰ Louis Vuitton Malletier v Atul Jaggi & Anr (Delhi High Court, CS(OS) 1419/2009, 13 May 2010).

⁸¹ Levi Strauss & Co v Rajesh Agarwal (High Court of Delhi, RFA 127/2007 & CM 3247/2007, 3 January 2018).

⁸² Hermès International v Lederer de Paris Fifth Avenue, Inc 219 F.3d 104 (2d Cir 2000).

⁸³ <https://www.sciencedirect.com/science/article/abs/pii/S0160412003002010>

⁸⁴ <https://www.sciencedirect.com/science/article/abs/pii/S0160412003002010>

energy and land resources are used. Textile factories in Dhaka, Bangladesh, release 22,000 tons of toxic waste into rivers every year.⁸⁵

These environmental problems are becoming unintended consequences of IP enforcement. The very process of IP enforcement contributes in the environmental degradation. Low durability and cheap knockoffs products are also playing a complimentary role in the pollution, resource depletion, and long-term ecological harm.

Exploitation of creative labour and Innovation compromised

Guo Pei created a history in Met Gala 2015 by designing Rihanna's iconic yellow fur-trimmed cape gown that took two years to create. It almost took 50,000 hours of hand-embroidery and stitching. That dress is the representation of her culture and hard work of people behind.⁸⁶ Similarly in India, a single Chikankari bridal lehenga take 10 months or a year of needle work, involving different artisans. These artisans have to be masters of different type of stitching and hand embroidery. It sometimes take months to perfect a single motif. All a copycat needs a single screenshot. It is heart breaking for these creative labors to see cheaper replicas of their hard work. Consumer fails to understand the importance of creative labor and the reason behind the original cost. Continuance of knockoffs cultural might lead to 'Innovation Fatigue'. One of the reasons behind innovation fatigue is 'Diminished sense of accomplishment'. Innovation fatigue causes burnout, decreased productivity and disengagement.⁸⁷ Artisans feel discouraged, demoralized as their original work brings no incentive. Knockoffs overshadow hard work, devaluation of creative labor and compromise innovation in the fashion industry.

One of the core reason behind IP protection is fostering innovation. IP provides legal safeguard to innovators as a motivation for creativity. Lack of protection might lead to discontinuance of progress on Fashion industry. Many big fashion houses have also been accused to copying designs. For example Dolce & Gabbana was accused of stealing Giorgio Armani's trousers designs.⁸⁸ In 2015, Isabel Marant was accused of copying Oaxaca Indigenous designs.⁸⁹ Thus,

⁸⁵ <https://carbontrail.net/blog/fast-fashion-and-its-environmental-impact-in-2025/#:~:text=Fast%20Fashion's%20Contribution%20to%20Environmental,chemicals%20that%20aggravate%20water%20pollution.>

⁸⁶ <https://www.vogue.com.au/fashion/news/meet-the-chinese-designer-changing-the-couture-landscape-one-outofthisworld-gown-at-a-time/news-story/5db69b6a4c9c5804cdb7097765e20fe2>

⁸⁷ <https://siliconvalley.center/blog/innovation-fatigue-vs-the-need-for-constant-evolution>

⁸⁸ <https://www.theguardian.com/lifeandstyle/2009/jan/19/giorgio-armani-accuses-dolce-gabbana>

when it comes to innovation, a strong IP protection is important to maintain harmony between creative labour and innovation. Encouraging knockoffs might rupture the balance between the two.

Social and Cultural Impact

India's rich culture and ethnicity are poetically woven into very fabrics. Whether it's Rajasthani' Ghagra-choli, Punjabi' Phulkari, Lucknow's Chikankari, Mekhela Chador of Assam or Kerala's mundum neriyathum, every culture of different state in India is represented in an unique manner through clothes. Clothes play an important role in cultural and social representation. Many designers like Sabyasachi Mukherjee, Rahul Mishra, Rei Kawakubo and Gabriela Hearst are known for representating their culture through clothes. But their knockoffs versions play both positive and negative roles in the society.

Knockoffs blurs line of exclusivity. Haute Couture designs are symbol of mark of high class and luxury only reserved for the people who can afford it. Around 200 - 4000 people can actually afford to buy these pieces. By replicating these designs, middle and lower class people can participate in the fashion trends. Consumers indulge more in fashion knockoffs because they want to align with certain social and cultural groups. Consumers do not care whether it is authentic or not. This behaviour pattern is called 'Conspicuous Consumption' given by economist Thorstein Veblen. He explained this theory in his 1899 work 'The Theory of the Leisure Class'.⁹⁰ An individual engage in buying and using luxury goods, as a means of demonstrating wealth and social prestige. This behaviour is because of an individual's desire for social recognition and differentiation from others. Knockoffs fulfill these desires.

Due to rise of social media like instagram, facebook etc, people are in constant pressure of social comparison and validation. People are fueled with the desire of constantly looking good. Thus, affordable fake luxury goods satisfy these desires.

Consumer Deception

When it comes to knockoffs, there is a common misconception that consumer are usually aware of knockoffs products. In reality, deception could be beyond intentional purchase. Products

⁸⁹ <https://www.theguardian.com/global-development-professionals-network/2015/jun/17/mexican-mixe-blouse-isabel-marant>

⁹⁰ <https://www.ebsco.com/research-starters/political-science/veblens-theory-conspicuous-consumption>

quality, safety or performance can also be included deceptive practices. These are unfair trade practices. For sole reason of visual representation, consumer unintentionally buys unsafe or low quality products. Fake cosmetic products, footwear or other products might endanger health. This year in Kerala, fake cosmetic products were seized.⁹¹ Kerala Health Minister Veena George has raised warning against the excess mercury content in the dupe products as it could lead to tremors, depression, disability, changes in hearing or vision, numbness and tingling of body parts.⁹² Such products do not even pass BIS standards.

Consumers under false presumption believe that knockoffs may imitate similar authenticity or craftsmanship. They even lack durability. Court in the case of *Adidas v Payless*⁹³ found that visual similarity can create confusion between the consumers. Adidas during the court proceedings presented survey of consumers, confused regarding three - stripes and four - stripes. Due to rise of online platforms, on various websites like Amazon, Ebay and Stock X, fake products are sold. On these platforms, consumers are often confused what's real and what's fake. Consumer participate in the Deception without realizing that they are encouraging knockoff market.

Thus beyond mimicry of original products, knockoffs devaluated brand value, erode creative labour, distort fair market competition, deceiving consumers, and contribute to environmental, cultural and social harm. If originality is the heartbeat of the innovation then knockoffs are corroding the fashion industry.

Technological Disruptions and Knockoffs

The technological disruptions have radically increased the speed, scale and production of fashion knockoffs. The introduction of AI, automated pattern making softwares and computer-aided designs have equipped the manufacturers of these knockoffs to imitate fashion designs within days after their debut. In recent times there have been various instances where the entire fashion designs from the Paris Fashion Week's catwalk have been transited to overseas factories where suppliers generate knockoffs within hours with the help of technologies. This threat has

⁹¹ <https://www.indiatoday.in/india/kerala/story/rs-7-lakh-worth-of-harmful-cosmetics-seized-in-kerala-2671348-2025-01-28>

⁹² <https://www.onmanorama.com/lifestyle/health/2025/01/29/kerala-health-minister-veena-george-spot-harmful-makeup-products.amp.html?>

⁹³ *Adidas-America, Inc v Payless ShoeSource, Inc* 546 F Supp 2d 1029 (D Or 2008).

vehemently increased due to the support of AI technologies⁹⁴. The AI tools are expeditiously generating and replicating designs compromising the originality and discouraging innovations among the designers and brands. These AI models are trained from the pre-existing data and give outputs that are very much similar to the training data, consequently these knockoffs are easily technically feasible. In recent studies it has been shown that popular and deep generative models of AI have a very high possibility to completely imitate their training data samples.⁹⁵ Furthermore AI models like Dreambooth can further enhance and modify the source data in order to obtain new samples which again substantially infringes the original work.⁹⁶

Another area of technological development are e-commerce sites and social media, these websites continuously advertise and provide a platform to the suppliers of the knockoff goods. In a recent case of *M/S Reflect Sculpt Private Ltd. & Anr v Abdus Salam Khan*⁹⁷, the Delhi High Court granted permanent injunction in favor of Gaurav Gupta, the principal designer of M/s Reflect Sculpt Private Ltd, in this case the defendant was selling and advertising plaintiffs garments on a Youtube channel and also had an instagram account for the same. In another case of *Levi Strauss & Co. v. Imperial Online Services Pvt. Ltd.*⁹⁸ permanent injunction was granted and defendants were ordered to pay 4 lac damages for infringing the plaintiff's design which were again sold online. These social media trends wherein these knockoffs are promoted impacts consumers perceptions about the same. Platforms like RepTime, RepWatch, RepSneakers and DesignerReps provide a place for users to share information regarding these knockoffs and counterfeited items.⁹⁹

As per the latest report¹⁰⁰ of the Information Technology and Innovation Foundation (ITIF), Chinese e-commerce websites like AliExpress provide a major platform in the growth of counterfeit goods. During the study of the report ITIF purchased 51 items from AliExpress,

⁹⁴ ERockett and others, 'Fashion 4.0 and Emerging Designers: Leveraging Data and AI to Drive Creativity, Innovation and Compliance in Global Supply Chain Regulation' [2025] 20 JIPLP 113.)

⁹⁵ (16, 134 Nicholas Carlini et al. 2023. *Extracting training data from diffusion models*. arXiv:2301.13188 (2023).,,,,,, Nikhil Vyas et al. 2023. *Provable copyright protection for generative models*. arXiv:2302.10870 (2023).)

⁹⁶ (Copyright Protection in Generative AI: A Technical Perspective JIE REN, Michigan State University, USA)

⁹⁷ *M/S Reflect Sculpt Private Ltd. & Anr v Abdus Salam Khan*, High Court of Delhi, CS(COMM) 278/2024 & I.A. 4468/2025

⁹⁸ *Levi Strauss & Co. v. Imperial Online Services Pvt. Ltd* CS (COMM) 657/2021

⁹⁹ (THE SOCIOTECHNICAL EVOLUTION OF PRODUCT COUNTERFEITING: HOW SOCIAL MEDIA, SOCIAL NETWORKS, AND SOCIAL COMMERCE ARE "E-SOCIALIZING" PRODUCT COUNTERFEITING, Jay Kennedy, Mae O'Dell, and Lucy Ching, 2021.

¹⁰⁰ <https://itif.org/publications/2025/08/20/how-chinese-online-marketplaces-fuel-counterfeits/>

Shein as well as Temu out of which 21 items were found to be counterfeit goods. While the ITIF report majorly focuses on counterfeit goods, its findings highlight how easily knockoffs are sold and advertised on these platforms. These platforms are based upon the model which prioritizes high volume, low-cost listings with minimum seller verification making a perfect ecosystem for design imitating knockoffs. This regulatory vacuum facilitated more free circulation of knockoffs globally. Platforms like Instagram and YouTube have algorithm-driven recommendations and fast uploading tools, these with a blend of global shipping networks make the newly created knockoffs go viral within hours impairing the original designers even before their original collections enter the market.

Recommendations and the Way Forward

The persistence of fashion knockoffs reflects a structural mismatch between the speed of creative production and the rigidity of existing intellectual property frameworks. Addressing this challenge requires a multi-dimensional response that goes beyond narrow legal reform.

First, greater international coordination in fashion-related intellectual property protection is essential. Institutions such as the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO) could play a more active role in developing minimum standards for fashion design protection, thereby reducing jurisdictional asymmetries that are exploited by transnational knockoff producers. While uniformity should not come at the cost of cultural diversity or creative freedom, a baseline level of protection would enhance legal certainty for designers operating across global markets.

Second, brands and designers should increasingly integrate technological safeguards into their creative and commercial strategies. Authentication technologies, digital traceability systems, and AI-based monitoring can strengthen enforcement efforts and deter unauthorized replication. At the same time, collaborative models involving partnerships with artisans, technology firms, and sustainability initiatives can help build more resilient creative ecosystems that value originality and ethical production.

Third, consumer awareness and ethical responsibility must be foregrounded in any meaningful response to knockoffs. Public education campaigns can play a role in highlighting the hidden costs of knockoff consumption, including the exploitation of creative labour, environmental harm, and compromised product quality. Ethical consumption should not be framed as elitist, but

rather as an informed choice that acknowledges the cultural, social, and environmental dimensions of fashion.

Fourth, enforcement mechanisms must be aligned with sustainability goals. The routine destruction of seized knockoff goods, while symbolically reinforcing intellectual property rights, generates significant environmental costs. Alternative approaches grounded in circular economy principles such as recycling, repurposing, or regulated redistribution of non-deceptive goods should be explored. Such measures would allow enforcement practices to address infringement while minimizing ecological harm.

Finally, addressing the knockoff problem requires a genuinely multi-stakeholder approach. Regulators, designers, digital platforms, consumers, and civil society actors must engage collaboratively to balance competing interests. Excessively strong protection risks entrenching monopolistic practices and restricting creative exchange, while inadequate protection undermines creative labour and fair competition. A balanced framework that integrates legal harmonization, technological innovation, ethical consumption, and sustainability considerations offers the most promising pathway forward.

Conclusion

Fashion knockoffs are not merely a peripheral legal problem but a structural challenge situated at the intersection of creativity, commerce, technology, and culture. While imitation has historically played a role in the diffusion and democratization of fashion, contemporary knockoff practices accelerated by digital technologies and globalized production networks pose systemic risks to creative labour, market fairness, and environmental sustainability.

Existing intellectual property regimes, shaped by slower modes of production and territorial enforcement, struggle to respond effectively to the speed and scale of contemporary imitation. Addressing this gap requires a recalibration of regulatory approaches that move beyond reactive enforcement toward more adaptive, collaborative, and sustainability-oriented models of protection.

Ultimately, the challenge is not to eliminate imitation altogether a goal neither feasible nor desirable in a creative industry built on dialogue and reinterpretation but to ensure that the conditions of imitation do not erode the economic, cultural, and ethical foundations upon which the fashion industry depends.